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12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 RONALD S. CALDERON and
THOMAS M. CALDERON,

18 Defendants.
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REPLY TO DEFENDANT RONALD S.
CALDERON'S OPPOSITION TO THE
GOVERNMENT'S *EX PARTE* APPLICATION
FOR A PROTECTIVE ORDER; EXHIBITS

Trial Date: Sept. 16, 2014
Time: 9:30 AM
Place: Courtroom 5

21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California, hereby files its Reply to Defendant Ronald S. Calderon's
24 Opposition to the Government's Ex Parte Application for a Protective
25 Order.

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1 This reply is based upon the attached memorandum of points and
2 authorities, the attached exhibits, the files and records in this
3 case, and further evidence and argument the Court may permit.

4 Dated: March 31, 2014

Respectfully submitted,

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9 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 21, 2014, the government filed an ex parte application for a protective order relating to its production of discovery in the above-captioned case. (Dkt. # 30). The government did not caption the application as a motion, but rather explained to the Court that the parties had attempted for several weeks to negotiate a joint protective order and although two of the parties had agreed on a proposed protective order, one of the parties objected to limited portions of it. (Id. at 3-7). The dispute came down to "the grand jury testimony, a few FBI reports, and one FBI recording." (Id. at 3). The government did not argue or even suggest that any of the parties had failed to negotiate in good faith. The government simply asked for the Court's intervention because "over a month [had] passed since the defendants [had] been indicted" and because the government takes seriously its need to provide timely discovery to the defendant, while not sacrificing related concerns such as ongoing investigations and personal privacy. (Id. at 4).

The government points out these concerns because defendant Ronald S. Calderon and his counsel, Mark Geragos, have now filed an opposition to the ex parte application attacking the government and accusing it of acting in bad faith. To the contrary, the government has repeatedly sought ways to produce discovery to the defendants so that they can prepare their respective cases for trial. Specifically, they accuse the government of leaking a sealed search warrant affidavit to the media and of misrepresenting to the Court the scope of a proposed protective order. (Opp., pp. 3, 4-5). In addition to these baseless attacks, Mr. Geragos asks the Court to

1 apply the wrong legal standard when resolving the dispute over the
2 protective order, claiming that there must be "good cause for a
3 protective order covering grand jury testimony." (Id. at 3)
4 (emphasis added). For these reasons, and to correct the record, the
5 government files this brief reply.

6 **II. ARGUMENT**

7 **A. DEFENDANT RONALD S. CALDERON'S OPPOSITION IS FACTUALLY** 8 **INACCURATE AND ASKS THE COURT TO APPLY THE WRONG LEGAL** 9 **STANDARD**

10 1. Defendant Ronald S. Calderon's Counsel Said He Had No 11 Objection to a Protective Order That Would Cover 12 "Virtually All of the Discovery"

13 Defendant Ronald S. Calderon contends that the government is
14 seeking a protective order that would cover "virtually all of the
15 discovery the government intends to produce." (Opp., p. 1). While
16 it is true that the government's proposed protective order would
17 cover virtually all of the discovery in this case, Mr. Geragos
18 indicated to the government that he had "no objection" to that aspect
19 of the protective order.

20 As the government explained in its ex parte application, the
21 parties attempted for several weeks to negotiate a joint protective
22 order. (Dkt. #30, p. 2). The parties exchanged three drafts of a
23 proposed protective order, but failed to reach a unanimous agreement
24 as to which protective order should apply to the discovery. The
25 government explained to defense counsel, including Mr. Geragos, that
26 there were essentially three categories of discovery: (1) documents
27 the government had obtained through court orders and grand jury
28 subpoenas (e.g., bank records, tax records, toll records, business
records, and public records); (2) grand jury testimony, a few FBI
reports, and one brief FBI recording, which the government viewed as

1 primarily Jencks Act material;¹ and (3) thousands of pages of FBI
2 documents and under seal pleadings, as well as hundreds of FBI
3 recordings and intercepted telephone calls.

4 The first category of discovery, which constitutes virtually all
5 of the discovery in the case, can be fairly characterized and
6 summarized as financial and personal information. For example, it
7 includes approximately 30,000 pages of records obtained from the
8 Pacific Hospital of Long Beach and its affiliates relating to
9 employee compensation and hospital billing records. It also
10 includes, among other things, approximately 8,000 pages of receipts
11 and billing records for defendant Thomas M. Calderon's company, the
12 Calderon Group, and personal information such as the tuition expenses
13 and grades of defendant Ronald S. Calderon's son.

14 On March 10, 2014, the government sent defense counsel the last
15 draft of the proposed protective order and asked defense counsel if
16 defense counsel had any objections to it (the "March 10th protective
17 order"). See Ex. A. It took ten days for Mr. Geragos to finally
18 reply to the government's email. See Ex. B. In his reply email, Mr.
19 Geragos told the government that he had "no objection" to a
20 protective that covered "financial and personal information." (Id.)
21 The government reasonably interpreted this email from Mr. Geragos to
22 mean that he had no objection to a protective order that covered the
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25

26 ¹ The government explained in its ex parte application that
27 category 2 of the discovery was a "small universe of documents." To
28 be clear, it is made up of approximately 15 witnesses' grand jury
testimony, five witnesses' FBI 302s, and one FBI recording containing
statements made by one witness.

1 first category of discovery, which was virtually all of the discovery
2 in the case.²

3 Mr. Geragos now claims that he objects to any protective order
4 that would protect anything beyond "bank records and personal
5 identifying information." (Opp., p. 1) (emphasis added). This is
6 inconsistent with what he told the government in his email on March
7 20, 2014. More importantly, such a limited protective order would,
8 among other things, leave all of the receipts and billing records for
9 defendant Thomas M. Calderon's company, the Calderon Group, and other
10 extremely sensitive business and personal information, such as the
11 tuition expenses and grades of defendant Ronald S. Calderon's son,
12 completely unprotected.

13 2. The Government Has Not Misrepresented the Scope of One
14 of its Proposed Protective Orders to the Court

15 Mr. Geragos next argues that the government misrepresented to
16 the Court the scope of the March 10th protective order when it said
17 it was only "slightly more expansive than the one Mr. Kopp proposed."
18 (Id. at 2). According to Mr. Geragos, the March 10th protective
19 order would have also included what is described as category 3 of the
20 discovery above (i.e., "thousands of pages of FBI documents and under
21 seal pleadings, as well as hundreds of FBI recordings and intercepted
22 telephone calls"). (Id.) This is simply false. The March 10th
23 protective order plainly states:

24 [T]here are thousands of pages of FBI documents and under
25 seal court pleadings, as well [*sic*] hundreds of FBI
recordings and intercepted telephone calls, which the

26 ² The government acknowledges that the term "financial" is
27 ambiguous and that Mr. Geragos may have meant "bank records" when he
28 used it, but that is not what he said and that is not what the
government understood when it prepared its ex parte application.

1 government also plans to turn over to the defendants in
2 discovery. Unlike the other discovery items, however,
3 several portions of this discovery must be redacted before
4 it can be turned over to the defendants. A protective
5 order will not suffice because the government believes it
6 is not obligated, at this time, to disclose the redacted
7 portions of the discovery to anyone outside of the
8 government.

9 (Dkt. # 30, Ex. C) (emphasis added). This language in the March
10 10th protective order makes clear that category 3 of the
11 discovery would not be covered by the protective order. It also
12 makes clear that the documents that the government obtained
13 pursuant to grand jury subpoena (category 1) and the "other
14 discovery items," namely, the grand jury transcripts (category
15 2) would be covered by the protective order.

16 3. Defendant Ronald S. Calderon's Counsel Is Encouraging
17 the Court to Apply the Wrong Legal Standard

18 As stated above, the dispute over the protective order really
19 came down to category 2 of the discovery (i.e., "the grand jury
20 testimony, a few FBI reports, and one FBI recording."). Mr. Geragos
21 argues that the government must "explain why there is good cause for
22 a protective order covering grand jury testimony and FBI reports."
23 This is the wrong legal standard for the Court to apply when deciding
24 whether to issue a protective order.

25 Category 2 of the discovery is primarily comprised of witness
26 statements that the government is under no obligation to turn over at
27 this early stage of the proceedings. Production of these materials
28 is covered by the Jencks Act, which only requires the government to
turn them over after the witness has "testified on direct
examination." See 18 U.S.C. § 3500(b). The government's previous
willingness to turn these items over to the defendants sooner, so
that the defense would have ample time to review them before trial,

1 was conditioned upon the parties entering into a reasonable
2 protective order.

3 Even assuming that the government had an obligation to turn the
4 grand jury testimony over to the defendants at this early stage in
5 the proceedings, which it does not, the Court could still issue a
6 protective order with respect to the grand jury testimony without
7 having to find "good cause" before doing so. There is a "traditional
8 and fundamental policy" of keeping grand jury materials secret. See
9 Grand Jury Investigation v. United States, 642 F.2d 1184, 1190 (9th
10 Cir. 1981). Such secrecy exists for several reasons, including to
11 encourage free and untrammelled disclosures by persons who have
12 information and to protect the innocent accused who are exonerated by
13 the grand jury's investigation. Douglas Oil Co. v. Petrol Stops
14 Northwest, 441 U.S. 211, 219 n.10 (1979). The Supreme Court requires
15 that the party seeking disclosure of grand jury materials to
16 demonstrate that such disclosure is needed to avoid "possible
17 injustice" in another judicial proceeding. Id. at 221. Even if the
18 moving party makes such a showing, the Court still has complete
19 discretion to order that the disclosure of grand jury materials be
20 done "at a time, in a manner, and subject to any other conditions
21 that it directs." See Fed. R. Crim. 6(e)(3)(E).

22 In fact, the government routinely seeks protective orders for
23 grand jury materials - not just in this case - which limit disclosure
24 to that which is "necessary in preparation of the defense." The
25 Supreme Court warned against routinely granting unlimited disclosure
26 of grand jury materials once a criminal case was indicted:

27 [T]he courts must consider not only the immediate effects
28 [of disclosure] upon a particular grand jury, but also the
possible effect upon the functioning of the future grand

1 juries. Persons called upon to testify will consider the
2 likelihood that their testimony may one day be disclosed to
3 outside parties. Fear of future retribution or social
4 stigma may act as powerful deterrents to those who would
5 come forward and aid the grand jury in the performance of
6 its duties.

7 Id. at 222. Accordingly, Mr. Geragos' attempts to have the Court
8 apply a good cause standard when determining whether to issue a
9 protective order relating to the grand jury testimony should be
10 rejected.

11 4. The Government Was Not the Source of the Leaked Search
12 Warrant Affidavit

13 Lastly, Mr. Geragos argues that the government would be unable
14 to comply with any protective order and accuses the government of
15 being "the source of [a] leaked affidavit" relating to the search of
16 defendant Ronald S. Calderon's office. Beyond categorically denying
17 this baseless accusation and pointing out - once again - Mr. Geragos'
18 utter failure to provide any evidence in support of it, the
19 government will not address this argument because it relates to
20 another motion Mr. Geragos filed in the Eastern District of
21 California that is currently pending. Nevertheless, the government
22 has attached its response to that motion, lest the Court be concerned
23 there is any truth to Mr. Geragos' accusation. See Ex. C.

24 **III. CONCLUSION**

25 For the foregoing reasons, the government respectfully requests
26 that this Court sign the proposed protective order attached to the
27 government's ex parte application, which has been agreed to by
28 defendant Thomas M. Calderon and his counsel.